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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

SAM H. FARAHANI,

Plaintiff and Respondent,

v.

SAN DIEGO COMMUNITY COLLEGE  
DISTRICT et al.,

Defendants and Appellants.

D054717

(Super. Ct. No. GIC881390)

APPEAL from an order of the Superior Court of San Diego County, Joan M. Lewis, Judge. Affirmed.

The San Diego Community College District (District) appeals from an order awarding Sam H. Farahani \$50,300.34 in attorneys fees pursuant to Code of Civil Procedure section 1021.5 (section 1021.5). The award followed Farahani's successful petition for writ of mandate to invalidate the District's "last chance agreement" under which he waived statutory due process rights in violation of Education Code section 87485. The District contends that the trial court abused its discretion in awarding the

attorneys fees because the circumstances of Farahani's case do not serve the policies or satisfy the requirements of section 1021.5. We disagree and affirm the order.

Without filing a cross-appeal, Farahani raises two additional issues in his respondent's brief: (1) the court abused its discretion in failing to apply the loadstar method to calculate the amount of attorneys fees to be awarded and (2) the court could have granted him attorneys fees under Government Code section 800 as well as under section 1021.5. Farahani's claims for affirmative relief are not properly before us. (*California State Employees' Assn. v. State Personnel Bd.* (1986) 178 Cal.App.3d 372, 382, fn. 7 [a respondent who does not appeal from the judgment may not argue error on appeal].)

#### FACTUAL AND PROCEDURAL BACKGROUND

The parties and the court are familiar with the facts of the underlying case, which are set forth in *Farahani v. San Diego Community College Dist.* (2009) 175 Cal.App.4th 1486 (*Farahani I*), decided while this appeal was pending. (We take judicial notice of the record in *Farahani I* pursuant to Evidence Code sections 451, subdivision (a), 452, subdivision (d), and 459, subdivision (a).) In *Farahani I*, we rejected the District's narrow reading of Education Code section 87485 and held that it "render[ed] null and void *any* agreement to waive the benefits of chapter 3, 'Employment,'" with a single exception not relevant to Farahani's claim. (*Farahani I, supra*, 175 Cal.App.4th at p. 1492.) We affirmed the trial court's peremptory writ of mandate which directed the District to: "(1) reinstate Farahani with full back pay, interest and benefits and (2) require its governing board to determine whether Farahani should be terminated, 'all in compliance with the

requirements of the Education Code, including appropriate notice and opportunity to be heard.'" (*Id.* at p. 1489.)

Farahani moved for an award of attorneys fees under section 1021.5 or Government Code section 800. He attached a declaration in which he stated: "As a result of receiving no salary from the [District] for the past two years due to the illegal termination of my employment, payment of my living expenses and my legal fees has left me unable to pay the mortgage payments on my home, causing me to lose the family home to foreclosure, which was my only major asset. I have had to maximize the credit limits on my credit cards, borrow money from family, friends and acquaintances with no assurance of ever being able to recoup these debts. I have had to move into the home of a friend just to have a roof over my head. However, I have continued to pursue this case because I am aware of the greater threat that this practice of the District in terminating employees without providing them with the due process required by law poses to its employees."

The District opposed the award under section 1021.5 on grounds Farahani "did not confer a significant benefit on the public, his individual stake in the litigation vastly exceeded the burden of enforcement, and the interests of justice would not be served by awarding him attorney's fees." Farahani responded by quoting from the District's May 2008 petition for review and writ of mandamus challenging the trial court's denial of its motion for summary judgment. Arguing for extraordinary relief in this court, the District stated: "Last chance agreements such as the one at issue in this case are in widespread use throughout California's community college system. Such agreements are an efficient and

cost effective way to resolve employment matters." After urging that a published opinion was necessary "regardless of [this court's] holding," the District continued: "Because last chance agreements are in widespread use throughout California's community college system, this Petition transcends the parties to the Underlying Action, and is a matter of great importance to the general public."

The irony was not lost on the trial court. Citing the statement from the District's May 2008 petition, the court issued the following tentative ruling: "Based on the facts of this case and with these concessions, the Court believes Petitioner has demonstrated an entitlement to fees under CCP Sec. 1021.5 and sets the amount of fees at \$50,300.34." At the hearing on attorneys fees, the District argued that the lawyer's comment should not be given evidentiary weight and, in any event, the "public interest" it cited in the writ petition "was the interest of the community college district to be able to operate efficiently." Pressed by the court to reconcile the statement that the issues transcended the parties to the underlying action, the District reiterated that the public deserved to have its educational institutions operate efficiently, especially in light of "today's economic turmoil." The court confirmed the tentative ruling without further comment, and signed the amended judgment awarding Farahani \$50,300.34 in attorneys fees. The appeal ensued.

## DISCUSSION

### *I. The Purposes of Section 1021.5*

"Section 1021.5 codifies the private attorney general doctrine adopted by the California Supreme Court in *Serrano v. Priest* (1977) 20 Cal.3d 25 . . . . [Citation.] The

fundamental objective of the private attorney general doctrine is ""to encourage suits effectuating a strong [public] policy by awarding substantial attorney's fees . . . to those who successfully bring such suits and thereby bring about benefits to a broad class of citizens."" [Citation.] The doctrine rests upon the recognition that privately initiated lawsuits are often essential to the effectuation of the fundamental public policies embodied in constitutional or statutory provisions, and that, without some mechanism authorizing the award of attorney fees, private actions to enforce such important public policies will as a practical matter frequently be infeasible.' [Citation.]" (*RiverWatch v. County of San Diego Dept. of Environmental Health* (2009) 175 Cal.App.4th 768, 775, quoting *Woodland Hills Residents Assn., Inc. v. City Council* (1979) 23 Cal.3d 917, 933 (*Woodland Hills*).)

The District acknowledges that the purpose of section 1021.5 is to "encourage people to file suit to enforce important public policies where attorney's fees might otherwise be prohibitive." At the same time, the District stresses that the statutory language and case law demonstrate that "the Legislature did not intend to authorize an award of attorney fees in every case involving a statutory violation." (*Woodland Hills, supra*, 23 Cal.3d at p. 939.) It argues that the attorneys fee award did not serve the policies behind section 1021.5 because Farahani acted out of his own self-interest in filing the underlying action, and "from the outset . . . sought to recover [\$200,000 in damages] and thus needed no further encouragement."

We agree with the trial court that the District conceded that the underlying action involved enforcement of an important public policy. We also note that the District

reiterated these concessions in the opening brief in *Farahani I*, and asking that we publish our opinion in that case. Even if the trial court was persuaded that the District's comments referred to the public interest in encouraging efficient operations, fiscal responsibility is a still legitimate issue of public concern. However, *Farahani I* addressed a broader public policy issue, making clear that community college districts cannot sacrifice due process rights for the sake of efficient resolution of employee discipline. On this record, we conclude that the trial court's award was consistent with the policies of the statute. We turn to the question whether Farahani satisfied the specific requirements for the attorneys fee award under section 1021.5.

## II. *The Requirements of Section 1021.5*

Section 1021.5 provides: "Upon motion, a court may award attorneys' fees to a successful party against one or more opposing parties in any action which has resulted in the enforcement of an important right affecting the public interest if: (a) a significant benefit, whether pecuniary or nonpecuniary, has been conferred on the general public or a large class of persons, (b) the necessity and financial burden of private enforcement, or of enforcement by one public entity against another public entity, are such as to make the award appropriate, and (c) such fees should not in the interest of justice be paid out of the recovery, if any."

Thus, to obtain attorneys fees under section 1021.5, the party seeking fees must show that the litigation: ""(1) served to vindicate an important public right; (2) conferred a significant benefit on the general public or a large class of persons; and (3) [was necessary and] imposed a financial burden on plaintiffs which was out of proportion

to their individual stake in the matter.' [Citation.]" [Citation.]'" (*Punsly v. Ho* (2003) 105 Cal.App.4th 102, 109; see § 1021.5.) Because the statute states the criteria in the conjunctive, each must be satisfied to justify a fee award. (*Punsly v. Ho* at p. 114; § 1021.5.)

"Trial court decisions on attorney fee requests under . . . section 1021.5 have traditionally been reviewed deferentially and upheld absent a prejudicial abuse of discretion. [Citations.] Our Supreme Court recently clarified, however, that the proper standard of review depends on the extent to which there were issues of fact below. If the issue is whether the criteria for an award of attorney fees and costs in this context have been satisfied, 'this may be a mixed question of law and fact and, if factual questions predominate, may warrant a deferential standard of review.' [Citation.]" (*Roybal v. Governing Bd. of Salinas City Elementary School Dist.* (2008) 159 Cal.App.4th 1143, 1148 (*Roybal*).) "This standard of review affords considerable deference to the trial court provided that the court acted in accordance with the governing rules of law. We presume that the court properly applied the law and acted within its discretion unless the appellant affirmatively shows otherwise. [Citations.]" (*Mejia v. City of Los Angeles* (2007) 156 Cal.App.4th 151, 158 (*Mejia*).) "If, on the other hand, the underlying facts are largely undisputed and the issue calls for statutory construction, it is a question of law that is reviewed de novo. [Citation.]" (*Roybal, supra*, 159 Cal.App.4th at p. 1148.)

We defer to the trial court's resolution of the factual questions based on evidence in this record and conclude that the court did not abuse its discretion in awarding attorneys fees to Farahani pursuant to section 1021.5.

A. Significant Benefit to the General Public:

With respect to the first prong of section 1021.5, and "[w]here . . . the right vindicated is conferred by statute, 'courts should generally realistically assess the significance of that right in terms of its relationship to the achievement of fundamental legislative goals.'" (*Roybal, supra*, 159 Cal.App.4th at p. 1148, quoting *Woodland Hills, supra*, 23 Cal.3d at p. 936.) Relying on *Roybal*, and ignoring its own concessions, the District argues that the primary effect of *Farahani I* was "vindication of Mr. Farahani's own personal rights and economic interests" and the litigation did not confer a significant benefit on the general public. We disagree.

In *Roybal*, three school psychologists successfully sued the school district contending that it violated the Education Code in implementing layoffs. (*Roybal, supra*, 159 Cal.App.4th at pp. 1146-1147.) In support of their claim for attorneys fees under section 1021.5, plaintiffs argued that they had been forced to litigate their statutory right to be laid off only in seniority order "thereby benefitting all school psychologists and other certificated employees, including all school teachers, by vindicating an important right affecting the public interest in uniform and fair administration of public schools." (*Roybal, supra*, at pp. 1148-1149.) The court awarded attorneys fees to plaintiffs pursuant to section 1021.5, but the appellate court reversed, ruling that the paramount purpose and effect of the litigation was to obtain reinstatement and obtain damages for plaintiffs. (*Roybal, supra*, at pp. 1146-1147, 1150-1151.)

The District argues that Farahani's arguments are "indistinguishable from the arguments in *Roybal* and should similarly be rejected." The difficulty with this argument



is that the circumstances of this case differ from those in *Roybal*. The underlying writ petition in *Roybal* was not based on a due process violation but on a failure of proof that the three plaintiffs lacked the necessary bilingual skills to support the district's deviation from seniority procedures. "At best, it could be inferred that [plaintiffs'] victory revealed the deficiencies in the District's layoff procedure *on this occasion . . .*" (*Roybal, supra*, at p. 1149, italics omitted.)

Here, in stark contrast, the District conceded that the "last chance agreement" was in widespread use in California as "an efficient and cost effective way to resolve employee matters." Our holding in *Farahani I* that such agreements are null and void under Education Code section 87485 reflects an even broader public policy concern: "[W]hile as a general rule anyone may waive the advantage of law intended solely for his benefit, a law established for a public reason cannot be waived or circumvented by a private act or agreement (Civ. Code, § 3513 . . . ). Teachers are public employees and their tenure rights elaborately regulated by the Education Code reflect the public policy of the state. . . . "Legislation which is enacted with the object of promoting the welfare of large classes of workers whose personal services constitute their means of livelihood and which is calculated to confer direct or indirect benefits upon the people as a whole must be presumed to have been enacted for a public reason and as an expression of public policy in the field to which the legislation relates."" (*Farahani I, supra*, 175 Cal.App.4th at p. 1493.)

We conclude there is no serious question that the litigation pursued by Farahani conferred a significant benefit on the general public by protecting the due process rights

of community college faculty, and the court did not abuse its discretion in reaching the same conclusion.

B. Individual Stake Versus Financial Burden:

As to the second requirement for an attorneys fee award under the private attorney general doctrine, the District emphasizes that "'[s]ection 1021.5 was not designed as a method for rewarding litigants motivated by their own pecuniary interests who only coincidentally protect the public interest.' [Citations.]" (*Roybal, supra*, 159 Cal.App.4th at p. 1151.) The District contends that Farahani's "individual stake in the Petition greatly exceed[ed] the burden of bringing the Petition," pointing out that Farahani had incurred only \$50,000 in attorneys fees at the time he filed his motion and sought in excess of \$200,000 in damages, exclusive of attorneys fees. In response to the declaration in which Farahani describes the financial impact of the litigation, the District argues that "[s]uch burdens . . . were not a necessary result of his termination; instead, they were a consequence of Mr. Farahani's failure to mitigate his damages by obtaining other employment."

Again, the District's reliance on *Roybal* is misplaced. In that case, the lack of significant public benefit "alone" defeated plaintiff's claim for attorneys fees under section 1021.5 and the court commented only briefly on the second prong of the test. (*Roybal, supra*, 159 Cal.App.4th at p. 1151.) In response to plaintiffs' argument that attorneys fees exceeded the damages they received, the court noted that "the ratio of dollars recovered to dollars spent [was] not the sole measure" and nonfinancial personal interests might also come into play. (*Ibid.*) In *Roybal*, those interests appear to have

been aimed at convincing the court that there was insufficient evidence to support the administrative finding against them. (*Id.* at pp. 1149-1150.)

This case is similar to *Mejia, supra*, 156 Cal.App.4th 151, where the plaintiff supported the attorneys fee claim in an action under the California Environmental Quality Act (CEQA) with a declaration describing the financial impact to include depleting her retirement savings and forcing her to refinance her home to support the litigation. (*Id.* at pp. 156, 159.) The court ruled that Mejia's substantial personal interest in opposing the proposed development did not preclude a finding that the financial burden of the litigation was out of proportion to her personal stake and awarded attorneys fees on the basis of her declaration. (*Id.* at p. 159.) Farahani described even more severe financial consequences, including the loss of his home.

The District disputes Farahani's claims of severe financial burden, noting his failure to mitigate damages and citing his claim for more than \$200,000 in damages. It also maintains that *Mejia* is inapposite because plaintiff in that CEQA case did not seek a monetary recovery. However, that circumstance does not detract from the fact the court was still required to consider the burden of pursuing the litigation versus plaintiff's personal stake in the matter.

To the extent the issue of individual stake versus financial burden involved a mixed question of fact and law, we defer to the trial court's implied factual finding that Farahani's financial burden was great and outweighed his personal stake in the litigation. (*Roybal, supra*, 159 Cal.App.4th at p. 1148.)

C. Interests of Justice:

The District argues that injustice resulted from the attorneys fee award because Farahani's actions with respect to the "last chance agreement" were "essentially fraudulent." It maintains that Farahani entered into the "last chance agreement" with no intent to perform and should not be rewarded for his deceitful conduct. We rejected the same argument framed as an unclean hands defense in *Farahani I* (*Farahani I, supra*, 175 Cal.App.4th at p. 1495) and we reject it here.

DISPOSITION

The order is affirmed. Farahani is awarded costs on appeal pursuant to California Rules of Court, rule 8.278(a)(1) and attorneys fees on appeal pursuant to section 1021.5, with the amount to be determined by the trial court. (*Serrano v. Unruh* (1982) 32 Cal.3d 621, 639; *Phipps v. Saddleback Valley Unified School Dist.* (1988) 204 Cal.App.3d 1110, 1123, fn. 10.)

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McINTYRE, J.

WE CONCUR:

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BENKE, Acting P. J.

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HUFFMAN, J.